



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2022-0609; FRL-10025-01-R9]

#### **Air Plan Approval; Arizona; Maricopa County; Reasonably Available Control Technology - Combustion Sources**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Maricopa County Air Quality Department's (MCAQD or County) portion of the Arizona State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO<sub>x</sub>) and particulate matter (PM) from combustion equipment and internal combustion (IC) engines. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act) and to determine that the County's control measures implement Reasonably Available Control Technology (RACT) for major sources of NO<sub>x</sub> under the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). We are taking comments on this proposal and plan to follow with a final action. Elsewhere in this *Federal Register*, we are making an interim final determination to defer CAA sanctions associated with our previous disapproval action concerning the County's RACT demonstration for major sources of NO<sub>x</sub>.

**DATES:** Comments must be received on or before [Insert date 30 days after date of publication in the *Federal Register*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0609 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at [gong.kevin@epa.gov](mailto:gong.kevin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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## **I. The State’s Submittal**

- A. *What rules did the State submit?*

Table 1 lists the rules proposed for approval with the date they were revised by Maricopa County and the date they were submitted by the Arizona Department of Environmental Quality

(ADEQ).

TABLE 1 - SUBMITTED RULES

Rule #	Rule Title	Revised	Submitted
323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources	June 23, 2021	June 30, 2021
324	Stationary Reciprocating Internal Combustion Engines (RICE)	June 23, 2021	June 30, 2021

On September 25, 2021, the EPA determined that the submittal for the rules in Table 1 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. *Are there other versions of these rules?*

We conditionally approved previous versions of Rule 323 and Rule 324 (locally revised on November 2, 2016 and submitted to EPA in 2017<sup>1</sup>) into the Arizona SIP on July 20, 2020 (85 FR 43692). If we take final action to approve the June 23, 2021 versions of Rule 323 and Rule 324, these versions will replace the previously approved versions of the rules in the SIP.

C. *What is the purpose of these rules?*

Emissions of NO<sub>x</sub> contribute to the production of ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Emissions of PM, including PM equal to or less than 2.5 microns in diameter (PM<sub>2.5</sub>) and PM equal to or less than 10 microns in diameter (PM<sub>10</sub>), contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular

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<sup>1</sup> The original date of submittal for this SIP revision was December 19, 2016. However, due to an administrative error, the submittal lacked adequate documentation that demonstrated the County's SIP revision had met the public notice requirements required for completeness under 40 CFR Part 51 Appendix V. The County subsequently addressed the public notice requirement and the State resubmitted the submittal on June 22, 2017, and withdrew the December 19, 2016 submittal on May 17, 2019. As such, we will refer to the 2017 submittal when discussing the previously submitted version of Rule 323.

disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control NO<sub>x</sub> and PM emissions. Any stationary source that emits or has the potential to emit at least 100 tons per year (tpy) of VOCs or NO<sub>x</sub> is a major stationary source in a Moderate ozone nonattainment area (CAA section 182(b)(2), (f) and 302(j)).

Section III.D of the preamble to the EPA's final rule to implement the 2008 ozone NAAQS<sup>2</sup> discusses RACT requirements. It states, in part, that in order to meet the RACT requirements, SIP revisions implementing these requirements (RACT SIPs) must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that no sources in the nonattainment area are covered by a specific control techniques guidelines (CTG).<sup>3</sup> It also provides that states must submit appropriate supporting information for their RACT submissions as described in the EPA's implementation rule for the 1997 ozone NAAQS.<sup>4</sup>

Rule 323 regulates combustion equipment at non-power plant facilities and Rule 324 regulates stationary reciprocating internal combustion engines. The EPA's technical support documents (TSDs) have more information about these rules.

## **II. The EPA's Evaluation and Action**

### **A. *How is the EPA evaluating these rules?***

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

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<sup>2</sup> 80 FR 12264 (March 6, 2015).

<sup>3</sup> Id. at 12278.

<sup>4</sup> See id. and 70 FR 71612, 71652 (November 29, 2005).

Generally, SIP rules must require RACT for each major source of NO<sub>x</sub> in ozone nonattainment areas classified as Moderate or above (see CAA sections 182(b)(2) and 182(f)). The MCAQD regulates a portion of the Phoenix-Mesa ozone nonattainment area which is classified as Moderate for the 2008 8-hour ozone national ambient air quality standard (40 CFR 81.303). Maricopa County's "Analysis of Reasonably Available Control Technology For The 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP)," adopted December 5, 2016, submitted June 22, 2017 (the "2016 RACT SIP"), found that there were major sources of NO<sub>x</sub> within the Maricopa County portion of the Phoenix-Mesa nonattainment area subject to the County's regulations. Accordingly, these rules must establish RACT levels of control for applicable major sources of NO<sub>x</sub>.

The EPA's previous rulemaking on the 2017 versions of Rule 323 and Rule 324 found several deficiencies, which precluded full approval of these SIP revisions. Commitments from Maricopa County and ADEQ to resolve the approvability issues allowed the EPA to issue conditional approvals of these revisions to the Arizona SIP as provided under section 110(k)(4) of the CAA. The deficiencies in the 2017 submittal that Maricopa County and ADEQ committed to resolve are listed below. We further explain the deficient provisions in these rules in the TSDs.

#### *Rule 323 Deficiencies*

- a. Emergency fuel use exemptions in Section 104 were not adequately constrained, and had unclear language that could result in unintended emissions.
- b. Burner maintenance requirements in section 304.1.a did not meet RACT, as other jurisdictions regulating units in this size category are able to achieve numeric limits or have more stringent tuning requirements.
- c. The NO<sub>x</sub> limits of 42 ppmv for gas fuel-fired operations and 65 ppmv for liquid fuel-fired operations for non-turbine combustion equipment in this rule were not consistent with limits found in other jurisdictions and did not meet RACT.
- d. Section 306 allowed for operators to comply with the emission limits in this rule by

installing an Emission Control System (ECS), but the effectiveness of such a system in meeting the applicable emission standards was unknown without a compliance determination requirement (which in Section 503 only applies to Sections 301-304, and only for units larger than 100 million Btu/hr).

- e. The operations and maintenance plan requirements were only approved by the Control Officer in Section 306.3. This constituted unacceptable director's discretion.
- f. Section 503.2 specified that boilers larger than 100 MMBtu/hr must source test triennially, but did not describe a testing frequency for other units.
- g. Section 200 did not include a definition for "boiler," which is used throughout this rule and in the context of definitions for "annual capacity factor," "steam generating unit," and others, nor is the term defined in Maricopa's Rule 100 General Provisions and Definitions. Section 200 also did not include a definition for "continuous emissions monitoring system."

#### *Rule 324 Deficiencies*

- a. The Rule's structure for applicability and emission limits did not clearly outline RACT limits for all applicable IC engines. Engines that were subject to similar Federal requirements in the NSPS and NESHAP could be exempt from this rule's RACT limits.
- b. The Rule only applied to engines rated greater than 250 bhp, and to engines greater than 50 bhp only when aggregated at a facility operating engines with a combined bhp rating of greater than 250 bhp.
- c. The Rule allowed for excessive flexibility in the treatment of replacement engines. Emergency engines that serve as backups to replace non-emergency engines may do so until the non-emergency engine is repaired, but this time span was unbounded, and such engines may operate above RACT limits. Rule provisions also allowed for engines that are deemed equivalent or identical to replace existing engines to be treated the same as the engine being replaced, but there were no requirements for replacement engines to

quantify emissions equivalency or reductions.

- d. The Rule did not specify a compliance determination interval for engines, beyond the Control Officer's discretion.

In our July 20, 2020 (85 FR 43692) final rule promulgating our conditional approval of Rules 323 and 324, the EPA also finalized disapproval of the 2017 revision to Rule 322 regulating power plant combustion sources which also must implement RACT for major sources of NO<sub>x</sub>. Our conditional approvals and disapproval of these rules led to our subsequent disapproval of the County's demonstration for the County's 2008 8-hour ozone RACT SIP on January 7, 2021 (86 FR 971), which initiated offset sanctions to commence 18 months after the effective date of that rulemaking (February 8, 2021), and highway sanctions and a Federal Implementation Plan to be due 24 months after the effective date, under CAA sections 110(k)(3) and 301(a). The MCAQD must resolve the identified deficiencies in all of the associated rules in order for the EPA to determine that the RACT requirement is met, and to turn off these penalty clocks.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Stationary Gas Turbines," EPA 453/R-93-007, January 1993.
4. "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Industrial, Commercial & Institutional Boilers," EPA 453/R-94-022, March 1994.
5. "Alternative Control Techniques Document—NO<sub>x</sub> Emissions from Stationary

Reciprocating Internal Combustion Engines,” EPA 453/R-93-032, July 1993.

6. “De Minimis Values for NO<sub>x</sub> RACT,” Memorandum from G. T. Helms, Group Leader, Ozone Policy and Strategies Group, U.S. EPA, January 1, 1995.

7. “Cost-Effective Nitrogen Oxides (NO<sub>x</sub>) Reasonably Available Control Technology (RACT),” Memorandum from D. Ken Berry, Acting Director, Air Quality Management Division, US. EPA, March 16, 1994.

B. *Do the rules meet the evaluation criteria?*

We believe that these revisions to Rules 323 and 324 meet CAA requirements, and address the conditional approval deficiencies we identified in our 2020 rulemaking. Our TSDs contain more information about how the revised rules meet the commitments.

The revisions are otherwise consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. The TSDs have more information on our evaluations on these factors for each rule. On February 8, 2022 (87 FR 7069) we proposed approval for MCAQD Rule 322 to replace the SIP-approved version of that rule, and which would address our previous disapproval. Therefore, we find that all three rules regulating major sources of NO<sub>x</sub> in Maricopa County meet the applicable CAA requirements and include requirements that are consistent with RACT for NO<sub>x</sub> sources. Based on this finding, the EPA concludes that the submitted rules satisfy CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS for major sources of NO<sub>x</sub>.

C. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted Rules 323 and 324 because they fulfill all relevant requirements. In addition, we propose to convert the partial conditional approval of RACT demonstrations for the 2008 8-hour ozone NAAQS with respect to Rules 323 and 324 as found in 40 CFR 52.119(c)(2), to full approval. We will accept comments from the public on this proposal until [**Insert date 30 days after date of publication in the *Federal Register***]. If we take final action to approve the



submitted rules, our final action would correct the deficiencies identified in our January 7, 2021 partial approval, partial disapproval, and partial conditional approval of the RACT demonstration as they relate to major sources of NO<sub>x</sub> in MCAQD's RACT SIP submittal for the 2008 8-hour ozone NAAQS (86 FR 971).

### **III. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the rules identified above in sections I.A, I.B. and I.C of this preamble. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: **July 27, 2022.**

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

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